

1 Honorable James L. Robart
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8 UNITED STATES DISTRICT COURT
9 FOR THE WESTERN DISTRICT OF WASHINGTON
10 AT SEATTLE

11 Juweiya Abdiaziz ALI; A.F.A., a minor;
12 Reema Khaled DAHMAN; G.E., a minor;
13 Jaffer Akhlaq HUSSAIN; Seyedehfatemeh
14 HAMEDANI; Olad Issa OMAR; Faduma
15 Olad ISSA; F.O.I., a minor; and S.O.I., a
16 minor; on behalf of themselves as individuals
17 and on behalf of others similarly situated,

18 Plaintiffs,
19 v.
20

21 Donald TRUMP, President of the United States
22 of America; Jefferson B. SESSIONS, Attorney
23 General of the United States; U.S.
24 DEPARTMENT OF STATE; Rex W.
25 TILLERSON, Secretary of State; U.S.
26 DEPARTMENT OF HOMELAND
27 SECURITY; John F. KELLY, Secretary of
Homeland Security; U.S. CITIZENSHIP AND
IMMIGRATION SERVICES; Lori
SCIALABBA, Acting Director of USCIS;
CUSTOMS AND BORDER PROTECTION;
Kevin K. McALEENAN, Acting
Commissioner of CBP; OFFICE OF THE
DIRECTOR OF NATIONAL
INTELLIGENCE; and Michael DEMPSEY,
Acting Director of National Intelligence,

Defendants.

Case No. 2:17-cv-00135-JLR

**PLAINTIFFS' OPPOSITION TO
DEFENDANTS' MOTION FOR AN
EXTENSION OF TIME TO RESPOND
TO PLAINTIFFS' AMENDED
COMPLAINT AND SECOND
MOTION FOR CLASS
CERTIFICATION**

I. INTRODUCTION

Plaintiffs hereby oppose Defendants' motion for an extension of the briefing schedule on the second class certification motion and for an extension of time to respond to the amended complaint which challenges Executive Order 13780, "Protecting the Nation From Foreign Terrorist Entry Into the United States," 82 Fed. Reg. 13780 (Mar. 6, 2017) (EO2).

II. ARGUMENT

A. AN EXTENSION UNTIL 10 DAYS AFTER DEFENDANTS' MOTION TO STAY IS RESOLVED IS UNNECESSARY.

Defendants requested an extension of time in which to file responses to both the amended complaint and the second motion for class certification until 10 days after this Court rules upon their concurrently-filed motion to stay proceedings. Dkt. 86 at 1. Because a stay is not appropriate in this case, especially with regard to briefing on class certification, further delay in Defendants' responses is not warranted while this Court adjudicates Defendants' motion, which itself was filed only four days prior to the filing deadlines from which Defendants seek relief.

See Dkt. 85.

Defendants allege that an extension is necessary because the stay they have belatedly requested may make their responses to the amended complaint and second class certification motion unnecessary; in turn, they assert that a stay is appropriate in light of the “guidance” that this Court might receive from the resolution of an appeal of the preliminary injunction issued in *Hawai’i v. Trump*, No. 1:17-cv-50-KSC (D. Haw.), *see also Hawai’i v. Trump*, No. 17-15589 (9th Cir.). *See* Dkt. 86 at 1-2. However, they provide no explanation, in either their motion for an extension or motion to stay proceedings, as to how any “guidance” on the *Hawai’i* preliminary injunction will relate to class certification—nor could they, given that *Hawai’i* does not include any class allegations. *See Hawai’i v. Trump*, No. 1:17-cv-50-KSC, Dkt. 64 (amended complaint). Thus, at a minimum, Defendants should be required to file a response to the second motion for class certification.

Moreover, speculation as to any determinations on the merits of the *preliminary*

1 injunctive relief granted in *Hawai'i* does not provide a basis to strip Plaintiffs of their right to
 2 move forward with their case. The appeal at issue in *Hawai'i* involves resolution of a motion for
 3 preliminary injunction brought by the State of Hawaii and an individual U.S. citizen. *See id.*
 4 While that ruling undoubtedly will be highly relevant to the instant case, it is speculative at best
 5 that it will control a final determination on any of the claims presented. Unlike *Hawai'i*, this case
 6 is now before the Court on its merits—and is therefore likely to proceed regardless of the
 7 resolution of the *Hawai'i* appeal, which might be resolved on standing¹ or issues specific to
 8 preliminary injunctive relief. Moreover, the *Hawai'i* appeal will present the claims at a very
 9 preliminary stage without the benefit of any discovery.
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Indeed, in striking Plaintiffs' motion for a temporary restraining order and preliminary
 injunctive relief, this Court has already made clear that it was only "imposing a limited stay" on
 the proceedings with respect to Plaintiffs' motion for a TRO and PI and directed that "[n]o other
 aspects of this litigation are stayed." Dkt. 79 at 11. Notably, the Court's order was premised on
 the assumption that Defendants would file an expedited appeal of the *Hawai'i* decision. *Id.* at 8-
 9. Thus, there are no new developments that merit reconsideration of the Court's original
 determination that the litigation should carry forward with respect to all other aspects of this
 case.
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Further delay in Defendants' filing deadlines also is unwarranted in light of Defendants'
 prior motion for a two-week extension of their deadline to respond to Plaintiffs' first motion for
 class certification, which was premised upon Defendants' expectation of a forthcoming
 Executive Order (EO2) and subsequent change in litigation strategy. Dkt. 39 Instead, this case
 should move forward, first with full briefing on class certification and an answer or motion to
 dismiss, and then with discovery so that this Court can determine the issues on a fully developed
 record.
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27 ¹ The *Hawai'i* plaintiffs' standing is distinct from that of Plaintiffs here. Unlike that case, Named Plaintiffs
 28 are U.S. citizens and lawful permanent residents who filed visa petitions for their children and spouses, as well as
 the visa applicants who are beneficiaries of those petitions.

1 Plaintiffs have previously explained the harm that they and proposed class members will
 2 continue to face—including violation of their constitutional rights, family separation, emotional
 3 trauma, and deprivation of family and medical care—if EO2 goes into effect and bars
 4 adjudication of their visa applications and entry into the United States. *See, e.g.*, Dkts. 9, 50, 53.
 5 But in addition, Plaintiffs face concrete harm from further delays in the pending litigation. In
 6 staying Plaintiffs’ motion for a temporary restraining order (TRO) and preliminary injunction,
 7 this Court held that “if circumstances change, such as lifting the TRO or narrowing the scope of
 8 the TRO or a subsequent preliminary injunction, Plaintiffs can seek to lift the stay.” Dkt. 79 at 8.
 9 However, in order to be appropriately positioned to adequately defend Plaintiffs and proposed
 10 class members in the future, Plaintiffs must move forward with litigating their amended
 11 complaint, namely, the motion for class certification and discovery that may be critical to any
 12 future motion for preliminary injunctive relief. Indeed, this Court previously requested briefing
 13 on whether preliminary injunctive relief was appropriate for proposed class members prior to an
 14 order certifying the class. Dkt. 65. While Plaintiffs’ supplemental brief submits there is ample
 15 authority to provide preliminary injunctive relief prior to class certification, Plaintiffs seek to
 16 move forward with class certification to eliminate any uncertainty with respect to their capacity
 17 to obtain such relief on behalf of proposed class members should the need arise.
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19 Any extension serves only to increase the harm that Plaintiffs and proposed class
 20 members may face before the merits of their claims are heard should the injunctions against the
 21 Executive Order issued in other cases be lifted or modified in any way.

22 **B. DEFENDANTS HAVE HAD ADEQUATE TIME TO EVALUATE THE LEGAL
 23 AND FACTUAL ISSUES IN THIS CASE.**

24 Defendants further claim an extension is warranted to consult with Defendant agencies
 25 and to review the legal and factual issues in the case, including Plaintiffs’ legal claims, the
 26 circumstances of the Plaintiffs and their adequacy as class representatives, and how the (now
 27 enjoined) EO2 affects the proposed class. Dkt. 86 at 2. Defendants have had more than enough
 28

time to consult with their clients and to evaluate these legal and factual issues. This case was
 1 initiated on January 30, 2017 by four of the ten existing plaintiffs, Dkt. 1, and Plaintiffs
 2 amended the complaint to include six additional plaintiffs nearly one month ago, Dkt. 52. Of
 3 the existing ten plaintiffs, five are children of petitioner Plaintiffs. Thus, Defendants have had
 4 over two months to review the cases of four of the ten plaintiffs and nearly a month to review
 5 the cases of the remaining six additional plaintiffs. This is more than sufficient time to carry out
 6 any investigation of the Plaintiffs and their adequacy as class representatives.
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In addition, it is more than sufficient time to evaluate Plaintiffs' "numerous" statutory
 9 and constitutional claims. Dkt. 86 at 2. Plaintiffs have raised six claims. Dkt. 52. Given that
 10 litigation challenging EO1 and EO2 is pending in at least fifteen cases,² and that Defendants are
 11 parties in every single one of these cases, their claim to need additional time to consider their
 12 responses to these arguments rings hollow.
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Moreover, it is unclear how or why Defendants would need more time to evaluate how
 15 EO2 "affects" the proposed class. Dkt. 86 at 2. EO2, on its face, answers that question. As
 16 already briefed and argued in the context of Plaintiffs' motion for injunctive relief, EO2
 17 indefinitely bans adjudication of immigrant visa applications and entry of immigrant visa
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² In this district, the related cases of *Washington v. Trump*, No. 2:17-cv-141-JLR (W.D. Wash.) and *Doe v. Trump*, No. 2:17-cv-178-JLR (W.D. Wash.) (both pending before this Court) also challenge EO2. The case of *Wagafe v. U.S. Citizenship and Immigration Services*, No. 2:17-cv-00094 (W.D. Wash.), is pending in this district and challenges Sections 2(c), 4, and 5 of EO2.

Outside this district, there are numerous other challenges to portions of EO2. See, e.g., *International Refugee Assistance Project v. Trump*, No. 8:17-cv-361-TDC (D. Md.), appeal pending; *International Refugee Assistance Project v. Trump*, No. 17-1351 (4th Cir.); *Hawai'i v. Trump*, No. 1:17-cv-50-KSC (D. Haw.), appeal pending; *State of Hawai'i, v. Donald Trump*, No. 17-15589 (9th Cir.); *Sarsour v. Trump*, No. 1:17-cv-120-IDD (E.D. Va.); *Al-Mowafak v. Trump*, No. 3:17-cv-00557-WHO (N.D. Cal.); *Hagig v. Trump*, No. 1:17-cv-289-RBJ (D. Colo.); *Pars Equality Center v. Trump*, No. 1:17-cv-255-TSC (D.D.C.); *Universal Muslim Assoc. of America, Inc. v. Trump*, No. 17-cv-537 (D.D.C.); *Unite Oregon v. Trump*, No. 3:17-cv-179-PK (D. Or.); *Tawfeeq v. U.S. Department of Homeland Security*, No. 1:17-cv-353-TCB (N.D. Ga.); *Huff v. Trump*, No. 17-cv-2081 (N.D. Ill.); *Arab American Civil Rights League v. Trump*, No. 2:17-cv-10310 (E.D. Mich.); *Universal Muslim Association of America v. Trump*, No. 1:17-cv-00537 (D.D.C.).

holders, thereby prolonging separation of proposed class members who are immigrant visa
1 petitioners and beneficiaries. *See* Dkts. 53, 72, 78.
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Finally, the deadline for the joint status report and discovery plan that the parties filed
3 on March 28, 2017 (Dkt. 82), has been on the docket since February 21, 2017 and the parties
4 conducted their meet and confer on March 7, 2017. Thus, Defendants' counsel was on notice of
5 the deadline and able to prepare Defendants' part of the joint status report and discovery plan
6 for over six weeks.
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9 III. CONCLUSION

10 The Court should deny Defendants' motion, order Defendants to file a response to
11 Plaintiffs' amended complaint and to their second motion for class certification, and set a
12 schedule for the progression of the litigation, including discovery.
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14 Dated this 4th day of April, 2017.

15 Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on April 4, 2017, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the attorneys of record for all Defendants.

Executed in Seattle, Washington, on April 4, 2017.

s/ Maria Lucia Chavez

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